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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/780,166	02/17/2004	Dwight L. Pierce	62764-00010USPT	1287
7590 Daniel G. Nguyen Jenkins & Gilchrist Suite 2700 1401 McKinney Houston, TX 77010		08/21/2008	EXAMINER MOLINA, ANITA C	
			ART UNIT 3626	PAPER NUMBER
			MAIL DATE 08/21/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/780,166	PIERCE, DWIGHT L.	
	Examiner	Art Unit	
	ANITA MOLINA	3626	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 February 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>05/18/2004</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 101

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 16-20 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The claims 16-20 can be reasonably interpreted as encompassing a human being, which is non-statutory subject matter (see: MPEP 2105).

1. Claims 1-8 are rejected under 35 U.S.C. 101 based on Supreme Court precedent, and recent Federal Circuit decisions, the Office's guidance to examiners is that a § 101 process must (1) be tied to another statutory class (such as a particular apparatus) or (2) transform underlying subject matter (such as an article or materials) to a different state or thing. *Diamond v. Diehr*, 450 U.S. 175, 184 (1981); *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972); *Cochrane v. Deener*, 94 U.S. 780, 787-88 (1876).

2. An example of a method claim that would not qualify as a statutory process would be a claim that recited purely mental steps. Thus, to qualify as a § 101 statutory process, the claim should positively recite the other statutory class (the thing or product) to which it is tied, for example by identifying the apparatus that accomplishes the method steps, or positively recite the subject matter that is being transformed, for example by identifying the material that is being changed to a different state.

3. Here, applicant's method steps, fail the first prong of the new Federal Circuit decision since they are not tied to another statutory class and can be preformed without the use of a particular apparatus. Furthermore, the method steps fail to transform underlying subject matter to a different state or thing. The mere storing, receiving and accessing data is not a transformation because a data is not statutory subject matter. Thus, claims 1-8 are non-statutory since they are not tied to another statutory class and they do not transform underlying subject matter to a different state or thing.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 3-5, 7, and 9-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 2004/0019794 to Moradi et al, hereinafter, Moradi in view of US in view of US 6,263,330 to Bessette.

As per claim 1, Moradi teaches **a method of facilitating patient access to pharmacies, comprising:**

-establishing a prescription registry in which patients who have joined said prescription registry may store information regarding their prescriptions (see: paragraph 35);

-receiving and storing said information in said prescription registry (see: paragraph 36);

-providing said patients with a list of pharmacies that have subscribed to said prescription registry, said list including contact information which said patients may use to contact and provide said pharmacies with one or more prescription identifiers (see: paragraph 40); and

Moradi fails to teach **assigning a unique prescription identifier to said information for each prescription, said unique prescription identifier initially known only to said patients and said prescription registry; and allowing said pharmacies to access said information stored on said prescription registry using said prescription identifiers.** Bessette teaches assigning a unique identifier (URL) to patient medical data (see: column 3, lines 57-66). Bessette also teaches allowing access to specific medical data using the unique identifiers (URLs) depending on the level of access granted by the patient (see: column 10, lines 6-22). It would have been obvious to one of ordinary skill in the art to include in the prescription delivery system of Moradi, the unique identifiers as taught by Bessette because the claimed invention is merely a combination of old elements, and in the combination, each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

As per claim 3, Moradi teaches the claimed method, **wherein said step of receiving said information includes receiving a scanned image file of an original prescription slip for each prescription (see: paragraph 36).**

As per claim 4, Moradi teaches the claimed method, **wherein said step of receiving said information further includes obtaining physical possession of an original prescription slip for each prescription** (see: paragraph 36). It is noted that one would have to physically possess a prescription slip in order to scan it.

As per claim 5, Moradi teaches the claimed method, **wherein said prescription identifier includes a fill code for each patient that may be used for all prescriptions belonging to said patient** (see: paragraph 95).

As per claim 7, Moradi teaches the claimed method, **further comprising requiring said pharmacies to satisfy one or more qualification criteria, including passing a background check, in order to subscribe to said prescription registry** (see: paragraph 166).

As per claim 9, Moradi teaches **a system for facilitating patient access to pharmacies, comprising:**

- a prescription registry, **said prescription registry including at least one database therein for storing prescription information** (see: paragraph 22) and **further including a user interface for said at least one database** (see: paragraph 194), **said user interface comprising:**

- a member login screen for allowing a member of said prescription registry to access said at least one database (see: paragraph 103);

- a prescription information screen for allowing a member services provider operator to capture prescription information for one or more prescriptions of said member (see: paragraph 52);

-a prescription upload screen for allowing said member services provider operator to upload said prescription information, including a scanned image file of each prescription, to said at least one database (see: paragraph 24); and

-a prescription acceptance screen for allowing said pharmacy to accept said one or more prescriptions and for locking each prescription that is accepted by said pharmacy from further access (see: paragraph 100).

Moradi fails to teach **a prescription verification screen for allowing a pharmacy to access said prescriptions using a unique prescription identifier, said prescription identifier initially known only to said member and said prescription registry**. Bessette teaches allowing access to specific medical data using unique identifiers (URLs) depending on the level of access granted by the patient (see: column 10, lines 6-22). It would have been obvious to one of ordinary skill in the art to include in the prescription delivery system of Moradi, the unique identifiers as taught by Bessette for the same reasons set forth for claim 1.

As per claim 10, Moradi teaches the claimed system, **wherein said user interface further comprises a membership application screen for accepting new members to said prescription registry** (see: paragraph 137).

As per claim 11, Moradi teaches the claimed system, **wherein said user interface further comprises a member services screen for allowing said member to search for member services providers and pharmacies** (see: paragraph 40 and 171).

As per claim 12, Moradi teaches the claimed system, **wherein said user interface further comprises a member services screen for allowing said member to search for member services providers and pharmacies** (see: paragraphs 40 and 171).

As per claim 13, Moradi teaches the claimed system, **wherein said user interface further comprises a member services screen for allowing said member to update membership information** (see: paragraph 148).

As per claim 14, Moradi teaches the claimed system, **wherein said user interface further comprises a membership verification screen for allowing said member services provider operator to verify a membership of said member** (see: paragraph 104).

As per claim 15, the system according to claim 9, **wherein said user interface further comprises a membership verification screen for allowing said pharmacy to verify a membership of said member** (see: paragraph 196).

As per claim 16, Moradi teaches a **prescription registry service, comprising:**
-a database configured to store prescription information (see: paragraph 22);

-members who upload their prescription information to said database (see: paragraph 36); and

-member services providers that assist said members to upload their prescription information to said database (see: paragraph 36).

Moradi fails to teach **pharmacies that access said prescription information stored on said database, wherein said pharmacies are only allowed to access prescriptions for which they have been authorized by said members.** Bessette teaches allowing access to specific medical data using unique identifiers (URLs) depending on the level of access granted by the patient (see: column 10, lines 6-22). It would have been obvious to one of ordinary skill in the art to include in the prescription delivery system of Moradi, the access authorization as taught by Bessette for the same reasons set forth for claim 1.

As per claim 17, Moradi teaches the claimed prescription registry service, **wherein said members must surrender their original prescription slips to the prescription registry service before their prescription information are made accessible to said pharmacies** (see: paragraph 33).

As per claim 18, Moradi teaches the claimed prescription registry service, **wherein said database is configured to lock from further access any prescription information that have been accepted for filling by said pharmacies** (see: paragraph 100).

3. Claims 2, 8, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 2004/0019794 to Moradi in view of US 6,263,330 to Bessette and in view of US 2004/0006490 to Gingrich et al, hereinafter, Gingrich.

As per claim 2, Moradi fails to specifically teach the claimed method, **wherein all communications and transaction between said patients and said pharmacies take**

place through said pharmacies' normal channels and not through said prescription registry. Gingrich teaches communication through traditional means with a pharmacy (see: paragraph 104). It would have been obvious to one of ordinary skill in the art to include in the prescription delivery system of Moradi, the traditional communication method as taught by Gingrich because the claimed invention is merely a combination of old elements, and in the combination, each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

As per claim 8, Moradi fails to specifically teach the claimed method, **further comprising requiring said subscribing pharmacies to pay a fee to said prescription registry.** Gingrich teaches charging a fee for access to a prescription data exchange system (see: paragraph 33). It would have been obvious to one of ordinary skill in the art to include in the prescription delivery system of Moradi, the fee as taught by Gingrich for the same reasons set forth for claim 2.

As per claim 20, it is rejected for the same reasons set forth for claim 8.

4. Claims 6 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 2004/0019794 to Moradi in view of US 6,263,330 to Bessette and in view of US 6,973,435 to Sioufi et al, hereinafter, Siuofi.

As per claim 6, Moradi fails to teach the claimed method, **wherein said prescription identifier further includes a prescription number for each prescription of said patient.** Sioufi teaches a prescription number to identify an

individual prescription (see: column 8, lines 6-10). It would have been obvious to one of ordinary skill in the art to include in the prescription delivery system of Moradi, the prescription number as taught by Sioufi because the claimed invention is merely a combination of old elements, and in the combination, each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

As per claim 19, it is rejected for the same reasons set forth for claim 6. Also, see arguments for claims 1 and 5.

Conclusion

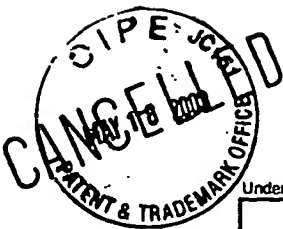
Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANITA MOLINA whose telephone number is (571)270-3614. The examiner can normally be reached on Monday through Friday 8am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, C. Luke Gilligan can be reached on 571-272-6770. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/ANITA MOLINA/
Examiner, Art Unit 3626
08/15/2008

/C Luke Gilligan/
Supervisory Patent Examiner, Art Unit 3626



JPW

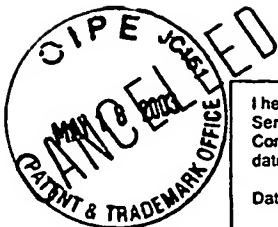
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TRANSMITTAL FORM (to be used for all correspondence after initial filing)	Application Number	10/780166	
	Filing Date	February 17, 2004	
	First Named Inventor	Dwight L. Pierce	
	Art Unit	N/A	
	Examiner Name	Not Yet Assigned	
Total Number of Pages in This Submission	295	Attorney Docket Number	62764-00010USPT

ENCLOSURES (Check all that apply)		
<input type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached <input type="checkbox"/> Amendment/Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input checked="" type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Response to Missing Parts/Incomplete Application <input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____	<input type="checkbox"/> After Allowance communication to Technology Center (TC) <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input checked="" type="checkbox"/> Other Enclosure(s) (please identify below): Postcard 9 references Certificate of Mailing - First Class
<div>Remarks</div>		

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT	
Firm or Individual name	JENKENS & GILCHRIST, A PROFESSIONAL CORPORATION Daniel G. Nguyen
Signature	<i>Daniel G. Nguyen</i>
Date	May 14, 2004

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Dated: May 14, 2004

Signature: Susan B. Jensen
(Susan B. Jensen)

Docket No.: 62764-00010USPT
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE



In re Patent Application of:

Dwight L. Pierce

Application No.: 10/780166

Confirmation No.:

Filed: February 17, 2004

Art Unit: N/A

For: DRUG PRESCRIPTION REGISTRY

Examiner: Not Yet Assigned

INFORMATION DISCLOSURE STATEMENT (IDS)

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Pursuant to 37 CFR 1.56, 1.97 and 1.98, the attention of the Patent and Trademark Office is hereby directed to the references listed on the attached PTO/SB/08. It is respectfully requested that the information be expressly considered during the prosecution of this application, and that the references be made of record therein and appear among the "References Cited" on any patent to issue therefrom.

This Information Disclosure Statement is filed within three months of the U.S. filing date (37 CFR 1.97(b)(1)).

A copy of each reference on the PTO/SB/08 is attached.

In accordance with 37 CFR 1.97(g), the filing of this Information Disclosure Statement shall not be construed to mean that a search has been made or that no other material information as defined in 37 CFR 1.56(a) exists. In accordance with 37 CFR 1.97(h), the filing of this Information Disclosure statement shall not be construed to be an admission that any patent, publication or other information referred to therein is "prior art" for this invention unless specifically designated as such.

Application No.: 10/780166

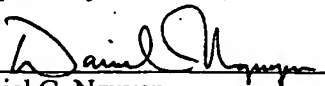
Docket No.: 62764-00010USPT

It is submitted that the Information Disclosure Statement is in compliance with 37 CFR 1.98 and the Examiner is respectfully requested to consider the listed references.

The Director is hereby authorized to charge any fee deficiency to our Deposit Account No. 10-0447, under Docket No. 62764-00010USPT (DGN).

Dated: May 14, 2004

Respectfully submitted,

By 

Daniel G. Nguyen

Registration No.: 42,933

JENKENS & GILCHRIST, A PROFESSIONAL
CORPORATION

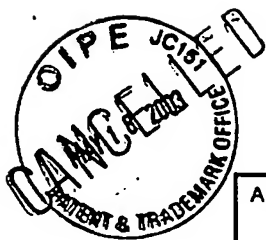
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Application No. 10/780166

Attorney Docket No.: 62764-00010USPT

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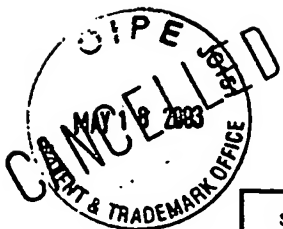
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Susan B. Jensen

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IDS (Citation) by Applicant
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9 references



PTO/SB/08a/b (08-03)
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Substitute for form 1449A/B/PTO INFORMATION DISCLOSURE STATEMENT BY APPLICANT (Use as many sheets as necessary)		Complete If Known			
		Application Number	10/780166		
		Filing Date	February 17, 2004		
		First Named Inventor	Dwight L. Pierce		
		Art Unit	N/A		
		Examiner Name	Not Yet Assigned		
Sheet	1	of	1	Attorney Docket Number	62764-00010USPT

U.S. PATENT DOCUMENTS					
Examiner Initials*	Cite No. ¹	Document Number	Publication Date MM-DD-YYYY	Name of Patentee or Applicant of Cited Document	Pages, Columns, Lines, Where Relevant Passages or Relevant Figures Appear
		Number-Kind Code ² (if known)			
	AA	US-5,845,255	12-01-1998	Mayaud	
	AB	US-2003/0050799	03-13-2003	Jay, et al.	
	AC	US-2003/0120513	06-26-2003	Samaquial	
	AD	US-2003/0154106	08-14-2003	Marks	
	AE	US-2003/0187692	10-02-2003	Park	

FOREIGN PATENT DOCUMENTS						
Examiner Initials*	Cite No. ¹	Foreign Patent Document	Publication Date MM-DD-YYYY	Name of Patentee or Applicant of Cited Document	Pages, Columns, Lines, Where Relevant Passages or Relevant Figures Appear	T ²
		Country Code ³ -Number ⁴ -Kind Code ⁵ (if known)				
	BA	WO 01/37138 A2	05-25-2001	Walgreens Co.		
	BB	WO 01/37138 A3	05-25-2001	Walgreens Co.		
	BC	WO 01/09701 A1	02-08-2001	Mohsen		
	BD	WO 01/86574 A2	11-15-2001	Biotech Holdings, LLC		

*EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant. **CITE NO.: Those patent(s) or publication(s) which are marked with an double asterisk (**) next to the Cite No. are not supplied because they were previously cited by or submitted to the Office in a prior application relied upon in this application for an earlier filing date under 35 U.S.C. 120. ¹ Applicant's unique citation designation number (optional). ² See Kinds Codes of USPTO Patent Documents at www.uspto.gov or MPEP 901.04. ³ Enter Office that issued the document, by the two-letter code (WIPO Standard ST.3). ⁴ For Japanese patent documents, the indication of the year of the reign of the Emperor must precede the serial number of the patent document. ⁵ Kind of document by the appropriate symbols as indicated on the document under WIPO Standard ST.16 if possible. ⁶ Applicant is to place a check mark here if English language Translation is attached.

NON PATENT LITERATURE DOCUMENTS					
Examiner Initials*	Cite No. ¹	Include name of the author (in CAPITAL LETTERS), title of the article (when appropriate), title of the item (book, magazine, journal, serial, symposium, catalog, etc.), date, page(s), volume-issue number(s), publisher, city and/or country where published.			T ²

*EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant.

¹ Applicant's unique citation designation number (optional). ² Applicant is to place a check mark here if English language Translation is attached.

ALL REFERENCES CONSIDERED EXCEPT WHERE LINED THROUGH. /A.M./

Examiner Signature	/Anita Molina/	Date Considered	08/15/2008
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HOUSTON 309717v1 62764-00010USPT

Notice of References Cited	Application/Control No. 10/780,166		Applicant(s)/Patent Under Reexamination PIERCE, DWIGHT L.	
	Examiner ANITA MOLINA		Art Unit 3626	Page 1 of 1

U.S. PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Name	Classification
*	A	US-2004/0019794	01-2004	Moradi et al.	713/185
*	B	US-6,263,330	07-2001	Bessette, Luc	707/4
*	C	US-2004/0006490	01-2004	Gingrich et al.	705/2
*	D	US-6,973,435	12-2005	Sioufi et al.	705/2
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FOREIGN PATENT DOCUMENTS

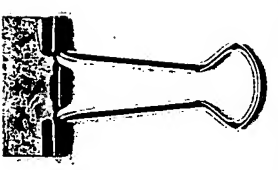
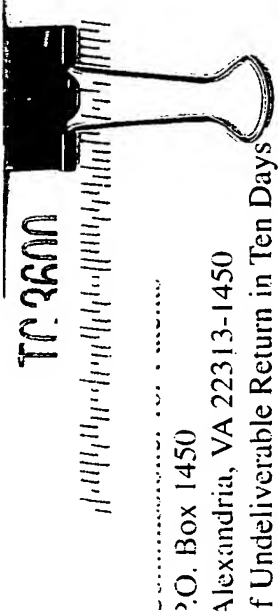
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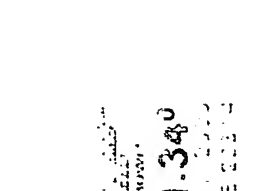
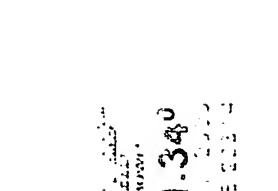
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